

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
JOHNSON CONTROLS, INC.,)	COMPLAINT
HOOVER UNIVERSAL, INC., and)	
MULTIFASTENER CORPORATION,)	Case No. _____
)	
Defendants.)	
_____)	

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action pursuant to Sections 104, 106, and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9604, 9606, and 9607, for injunctive remedial action and for other equitable relief to remedy a condition that U.S. EPA has determined may present an imminent and substantial endangerment to human health and welfare and the environment. The United States seeks injunctive remedial action and recovery of costs ("response costs"), with accrued interest, incurred by the United States in responding to a release or threat of release of hazardous

substances at or from the Shiawassee River Superfund Site (“Shiawassee Site”), located in the vicinity of Howell, Livingston County, Michigan. The United States also seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that the Defendants are jointly and severally liable for any future response costs in connection with the Shiawassee Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b) and (c), because the threatened or actual releases of hazardous substances that give rise to the United States’ claims have occurred in this District.

THE SHIAWASSEE SITE

4. The Shiawassee Site consists of about 40 miles of the Shiawassee River, extending from and including a facility, now owned by Hayes Lemmerz International - Howell, Inc., at 2440 West Highland Road, Howell, Livingston County, Michigan (hereinafter “Howell Facility”). The Howell Facility covers about 51 acres, and is bordered on the north and east by wetlands, on the west by the South Branch of the Shiawassee River, and on the south by Highway M59. The Howell Facility is within the meaning and scope of “ facility” in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

5. Hoover Ball and Bearing Company constructed, owned, and operated the Howell Facility from 1964 through 1968. Subsequently, Hoover Ball and Bearing Company changed its

name to Hoover Universal, Inc. ("Hoover I").

6. From 1969 through 1981, the Cast Forge Company ("Cast Forge"), a Michigan corporation, operated the Howell Facility. Jerry, John, and Joseph Steward (all of whom are now deceased) controlled Cast Forge as company officers; owned Cast Forge through their ownership of Multifastener Corporation, the parent corporation of Cast Forge; and owned the Howell Facility through the Multifastener Co-Partnership, a Michigan co-partnership.

7. During the years it was operated by Hoover I and by Cast Forge, the Howell Facility die-cast aluminum, among other processes.

8. Upon information and belief, the Howell Facility while operated by Hoover I from 1964 through 1968 used hazardous substances, including polychlorinated biphenyls ("PCBs").

9. Upon information and belief, "disposal" of "hazardous substances," including PCBs, into the environment at the Shiawassee Site, within the meaning and scope of Sections 101(29) and 101(14) of CERCLA, 42 U.S.C. §§ 9601(29) and 9601(14), occurred at the Howell Facility during the period it was owned and operated by Hoover I.

10. The Howell Facility, while operated by Cast Forge, used hazardous substances, including PCBs. Between 1969 and approximately 1973, Cast Forge discharged wastewater contaminated with hazardous substances, including PCBs, into the wetland north of the Howell Facility and adjacent to the Shiawassee Site. Between approximately 1973 and 1977, the Howell Facility discharged wastewater contaminated with hazardous substances, including PCBs, into an on-site lagoon that overflowed into the Shiawassee Site.

11. "Disposal" of "hazardous substances," including PCBs, into the environment at the Shiawassee, Site within the meaning and scope of Sections 101(29) and 101(14) of CERCLA, 42

U.S.C. §§ 9601(29) and 9601(14), occurred at the Howell Facility during the period it was operated by Cast Forge.

12. There has been a “release” or “threat of release” of “hazardous substances,” into the environment at the Shiawassee Site within the meaning of Sections 101(22) and 101(14) of CERCLA, 42 §§ 9601(22) and 9601(14).

13. Hazardous substances have been found in the soils and river sediment, among other locations, at the Shiawassee Site.

UNITED STATES’ RESPONSE ACTIONS AT THE SITE

14. In response to a release or substantial threat of a release of hazardous substances at the Shiawassee Site, U.S. EPA took response actions within the meaning of Section 104 of CERCLA, 42 U.S.C. § 9604.

15. On September 9, 1983, U.S. EPA placed the Shiawassee Site on the National Priorities List. 40 C.F.R. Part 300, Appendix B, 48 Fed. Reg. 40658.

16. Through a cooperative agreement with U.S. EPA, in the spring of 1987 the State of Michigan commenced a Remedial Investigation and Feasibility Study for the Shiawassee Site pursuant to 40 C.F.R. § 300.430. The State completed a Remedial Investigation Report in 1998 and completed a Feasibility Study Report in 1998. U.S. EPA completed a Supplemental Feasibility Study in 2001.

17. The decision by U.S. EPA selecting a remedial action to be implemented at the Shiawassee Site is embodied in a final “Record of Decision” (hereinafter “ROD”), executed on September 28, 2001. Notice of the final remedial action plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

18. In response to the release or substantial threat of release of hazardous substances at the Shiawassee Site, the United States has incurred response costs exceeding \$2,850,000. These response costs were associated with, among other things, environmental investigations, technical enforcement support, travel, payroll, laboratory analysis, and remedial planning. Additional response costs, including enforcement costs, have been and continue to be incurred by the United States.

THE DEFENDANTS

19. Defendant Hoover Universal, Inc. ("Hoover II") is a Michigan corporation and a wholly owned subsidiary of Johnson Controls, Inc. In 1985, Hoover II merged with Hoover I. As a result of this merger, Hoover II succeeded to the liabilities of Hoover I, including liabilities of Hoover I under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Upon information and belief, Hoover I operated the Howell Facility at the time of the disposal of hazardous substances within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

20. Defendant Johnson Controls, Inc. ("Johnson Controls") is a Wisconsin corporation and the sole shareholder of Hoover II. On information and belief, Johnson Controls succeeded to the liabilities of Hoover I, which merged into Hoover II.

21. Defendant, Multifastener Corporation ("Multifastener") is a Michigan corporation. A subsidiary of Multifastener, Cast Forge, operated the Howell Facility from 1969 through 1981, and hazardous substances were disposed at the Howell Facility during that time, within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). At all relevant times, Multifastener dominated and controlled

Cast Forge, which was a mere instrumentality or alter ego of Multifastener. As the alter ego of Cast Forge, Multifastener is subject to liability under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), arising from Cast Forge's ownership or operation of the Howell Facility at the time of disposal of hazardous substances.

FIRST CLAIM FOR RELIEF
(CERCLA Section 106 Remedial Action)

22. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

23. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and delegation from the President, the U.S. EPA, when it determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, may direct the Attorney General of the United States to secure such relief as may be necessary to abate such a condition or issue such orders as may be necessary to protect public health and welfare and the environment from imminent and substantial endangerment because of an actual or threatened release of a hazardous substance from a facility.

24. As set forth above, U.S. EPA determined that the Shiawassee Site may present an imminent and substantial endangerment to the public health and environment because of an actual or threatened release of hazardous substances.

25. On April 29, 2002, the U.S. EPA issued a Unilateral Administrative Order, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), ordering Defendants Johnson Controls and Multifastener to design and implement the remedy set forth in the ROD.

26. The Shiawassee Site is a "facility" within the meaning of Section 101(9) of

CERCLA, 42 U.S.C. § 9601(9).

27. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including PCBs, have been released from the Howell Facility into the environment, including soils and river sediment at the Shiawassee Site.

28. At the Shiawassee Site, there is a continuing threat of release into the environment through leaking, spilling, percolation, runoff, or otherwise, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

29. As a result of the release or threatened release of hazardous substances into the environment, U.S. EPA determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment within the meaning of Section 106 of CERCLA, 42 U.S.C. § 9606.

30. The Defendants are jointly and severally liable for remedying the releases and threatened releases of hazardous substances at the Shiawassee Site.

SECOND CLAIM FOR RELIEF
(CERCLA Section 107 Response Costs)

31. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

32. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section . . .

- (1) the owner and operator or . . . of a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and

containing such hazardous substances . . .

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). . . .

33. The Shiawassee Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

34. There have been "releases" or the substantial threat of releases within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances at or from the Shiawassee Site.

35. In response to the release or substantial threat of release of hazardous substances at the Shiawassee Site, the United States has taken response actions at the Shiawassee Site within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and has incurred costs as set forth in paragraph 18, above.

36. The response actions taken and the response costs incurred by the United States in connection with the Shiawassee Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

37. Each Defendant is a "person" as that term is defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and each is within one of the classes described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or is otherwise liable for the United States' response costs.

38. Each Defendant is jointly and severally liable to the United States for all

unreimbursed response costs incurred, and to be incurred, by the United States in connection with the Shiawassee Site, including enforcement costs and prejudgment interest on such costs.

39. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment that the Defendants are jointly and severally liable for such future response costs that the United States may incur in connection with the Shiawassee Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that this Court:

1. Enter judgment in favor of the United States and against the Defendants, jointly and severally, for all response costs incurred by the United States in connection with the Shiawassee Site, including prejudgment interest on those costs;
2. Order Defendants to conduct remedial action at the Shiawassee Site identified in the ROD;
3. Enter a declaratory judgment stating that each Defendant will be liable for all future response costs incurred by the United States in connection with the Shiawassee Site; and
4. Award the United States the costs of this action, including its costs of attorney time; and
5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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